



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

Marc E. Elias  
Tyler J. Hagenbuch  
Perkins Coie LLP  
700 13th Street NW, Suite 600  
Washington, DC 20005

**JUN - 7 2019**

RE: MURs 7309, 7399

Dear Meesrs. Elias and Hagenbuch:

On January 18, 2018 and June 1, 2018, the Federal Election Commission (the "Commission") notified your client, Crowdpac, Inc. ("Respondent"), of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, (the "Act"). On June 3, 2019, the Commission found, on the basis of the information in the complaints and information provided by the responses, that there was no reason to believe that Respondent violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Jonathan Peterson, the attorney assigned to this matter, at (202) 694-1525.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Tran", with a long horizontal flourish extending to the right.

Lynn Tran  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

160444-1174-15

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Crowdpac, Inc. MURs 7309, 7399

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5 **I. INTRODUCTION**

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7 These matters were generated by Complaints filed with the Federal Election Commission  
8 (the "Commission"), alleging that the online platform Crowdpac, Inc. ("Crowdpac") is operating  
9 as an unregistered political committee in violation of the Federal Election Campaign Act of  
10 1971, as amended (the "Act").<sup>1</sup> See 52 U.S.C. § 30109(a)(1). In particular, the Complaint  
11 alleges that Crowdpac is raising funds to support Democrats running against Republicans,  
12 spotlights only Democrats on its website and social media pages, and has also suspended  
13 Republican candidates from its website.<sup>2</sup> Crowdpac responds that it is a provider of commercial  
14 services, not a political committee, and the Commission previously assessed the applicability of  
15 federal campaign finance laws to its business when it approved Advisory Opinion 2014-07  
16 (Crowdpac).<sup>3</sup>

17 The available information indicates that Crowdpac continues to operate as a commercial  
18 service provider and not a political committee. Accordingly, the Commission finds no reason to  
19 believe that Crowdpac violated 52 U.S.C. §§ 30102, 30103, and 30104(a) by failing to organize,  
20 register, and report as a political committee.

<sup>1</sup> On January 12, 2018, Ron Bassilian filed the Complaint in MUR 7309 against Crowdpac. On June 1, 2018, he and Frank DeMartini filed a letter containing additional information as an amendment to the Complaint in MUR 7309. Since this filing included an additional complainant, it was designated as MUR 7399. Because the Complaint in MUR 7399 incorporates the Complaint in MUR 7309, we refer to them collectively as "the Complaint."

<sup>2</sup> See Compl. at 1, MUR 7309; Compl. at 1, MUR 7399.

<sup>3</sup> See Resp. at 1, MUR 7309; Resp. at 1, MUR 7399.

**II. FACTUAL BACKGROUND**

Crowdpac describes itself as a non-partisan, for-profit corporation with a business model that “promote[s] grassroots, small dollar contributor engagement in the political process through its commercial services and the tools available on its website.”<sup>4</sup> To further its business model, Crowdpac uses a “proprietary data algorithm” to provide voters with information about federal candidates based on “publicly available information, including campaign contributions, voting records, and what candidates have said.”<sup>5</sup> Crowdpac includes candidate pages on its website and allows these candidates to upload an introductory video and other videos explaining their position on issues.<sup>6</sup> Crowdpac also provides voters with tools to allow them to identify and support candidates who share their positions on issues, including the ability to create user profiles that indicate the issues they support and their position on those issues.<sup>7</sup> Crowdpac users can review information on candidate pages and make contributions (or “pledges” to prospective candidates).<sup>8</sup> When a user makes a contribution through Crowdpac’s website, the contribution is processed and transmitted to the candidate’s authorized committee by Crowdpac’s processing partner, Democracy Engine.<sup>9</sup> Crowdpac’s revenue comes from the convenience fees and voluntary donations paid by users who make contributions and pledges through the candidate

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<sup>4</sup> Resp. at 1, MUR 7309.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also Advisory Op. 2014-07 at 2 (Crowdpac).

<sup>7</sup> See Advisory Op. 2014-07 at 2.

<sup>8</sup> Resp. at 1-2, MUR 7309.

<sup>9</sup> *Id.* at 2; Advisory Op. 2014-07 at 3. The Commission examined Democracy Engine’s business operations in Advisory Opinion 2011-06 (Democracy Engine).

1 pages on the Crowdpac website.<sup>10</sup>

2 In June 2014, prior to launching its platform, Crowdpac requested an advisory opinion  
3 from the Commission seeking confirmation that its described business plan complied with the  
4 Act and Commission regulations.<sup>11</sup> On August 14, 2014, the Commission issued Advisory  
5 Opinion 2014-07, explaining that Crowdpac's proposal would not result in impermissible  
6 contributions to candidate committees because it was offering its commercial services to its  
7 customers, that is, contributors, and not to political committees.<sup>12</sup> Crowdpac then launched its  
8 platform.

9 Republican U.S. House candidate Ron Bassilian ("Bassilian") and former Republican  
10 U.S. House candidate Frank DeMartini ("DeMartini") argue that Crowdpac is not a non-partisan  
11 commercial service provider and is instead serving as an unregistered Democratic political  
12 committee.<sup>13</sup> In the MUR 7309 Complaint filed in January 2018, Bassilian specifically asserts  
13 that he requested Crowdpac provide him "equal time," noting that a Democratic candidate, Jess  
14 Phoenix, was featured on Crowdpac's front page and in Facebook ads.<sup>14</sup> Bassilian alleges that

<sup>10</sup> Resp. at 1, Kordestani Aff. ¶ 3, MUR 7399; Resp. at 2, MUR 7309.

<sup>11</sup> See Advisory Op. Request 2014-07.

<sup>12</sup> See Advisory Op. 2014-07 at 5-6. Crowdpac did not disclose that it would receive donations from individual customers as part of its business model in its advisory opinion request. See Advisory Op. Request 2014-07. The Commission therefore did not opine on this aspect of Crowdpac's business model. Advisory Op. 2014-07 at 5-6. It appears that, when customers make contributions through Crowdpac's website, they also have the option to give a financial tip to Crowdpac as part of the transaction. See *Donate to Republican Women for Progress*, <https://www.crowdpac.com/contribute/215662?amount=25> (last visited Oct. 9, 2018).

<sup>13</sup> See Compl. at 1, MUR 7309; Compl. at 1, MUR 7399. Since the filing of the Complaint, California held a primary election on June 5, 2018. Bassilian qualified for the general election but DeMartini did not. See California Secretary of State, *Statewide Direct Primary –Statement of Vote for United States Representative*, 93, 95 (June 5, 2018), <http://elections.cdn.sos.ca.gov/sov/2018-primary/sov/82-congress.pdf>.

<sup>14</sup> Compl. at 1, MUR 7309. Bassilian attached to the Complaint the email exchange with Crowdpac requesting equal time, screenshots of trending campaigns from Crowdpac's website, and screenshots of Facebook ads featuring Phoenix.

1 Crowdpac's promotion of Phoenix helped her raise over \$100,000 for her campaign.<sup>15</sup>

2 In the MUR 7399 Complaint, Bassilian and DeMartini notified the Commission of a  
3 *Medium* article posted by Crowdpac in May 2018 entitled, "A Stand Against Trumpism, A Stand  
4 for Democracy."<sup>16</sup> In this article, Crowdpac's then-acting CEO Jesse Thomas announced that  
5 Crowdpac was temporarily suspending fundraising campaigns featuring Republican candidates  
6 on the site for 10 days to allow Crowdpac to determine if those candidates and campaigns  
7 aligned with its values "in a way that Trumpism does not."<sup>17</sup> The article explains that Crowdpac  
8 received feedback from its users that its association with Steve Hilton, the company's first CEO  
9 and a conservative political strategist and pundit, and the presence of Republican campaigns on  
10 the site, created the impression that Crowdpac endorsed President Trump and his political  
11 movement.<sup>18</sup> Noting that "the actions of President Trump and his movement run counter to  
12 [Crowdpac's] values and the values of the vast majority of [its] users" and that "very few leaders  
13 in the Republican party have meaningfully rejected Trumpism," the article stated that Crowdpac  
14 is "temporarily suspending fundraising for Republican candidates on Crowdpac.com."<sup>19</sup>  
15 Bassilian and DeMartini allege that Crowdpac's change in policy is proof that it "is now a  
16 Democrat political action committee."<sup>20</sup>

17 Crowdpac responds that the Complaint offers no information that would suggest that it is

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<sup>15</sup> *Id.*

<sup>16</sup> *See* Compl. at 1, MUR 7399.

<sup>17</sup> Jesse Thomas, *A Stand Against Trumpism, A Stand For Democracy*, Medium (May 15, 2018),  
<https://medium.com/@Crowdpac/a-stand-against-trumpism-a-stand-for-democracy-a45e95a77ed5>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Compl. at 1, MUR 7399.

1 a political committee, and further, that the Commission has already determined in Advisory  
2 Opinion 2014-07 that its services and fees do not constitute contributions to political  
3 committees.<sup>21</sup> According to Crowdpac, decisions regarding the placement of candidate pages on  
4 its website are not based on any political issue or campaign request, but are driven by its  
5 “objective, data-driven online marketplace; candidates eliciting the most interest from users are  
6 spotlighted as ‘trending’” on its homepage.<sup>22</sup>

7 Crowdpac further responds that the decision to suspend certain Republican candidates  
8 from its website was not motivated by any partisan considerations or made for the purpose of  
9 influencing any election, but was based on objective, financial, values-driven business criteria.<sup>23</sup>  
10 Crowdpac provided an affidavit from its current CEO, Gisel Kordestani (“Kordestani”), stating  
11 that Crowdpac made a business decision to suspend many Republican campaigns after  
12 concluding that it could not successfully market its platform to all candidates without regard to  
13 their values, policy positions, and political parties.<sup>24</sup> Kordestani notes that the company faced a  
14 backlash from its users and community opposed to President Trump and the Republican Party  
15 because of Crowdpac’s association with Republican campaigns and Steve Hilton.<sup>25</sup> As  
16 examples, Crowdpac relies on a *Medium* article urging users to boycott the company and demand  
17 that Democratic candidates stop using the website because of Hilton’s “pro-Trump” views, and

<sup>21</sup> See Resp. at 2-3, MUR 7309; Resp. at 1, 3 MUR 7399.

<sup>22</sup> Resp. at 1-3, MUR 7309; see Compl., MUR 7309 Email Attach. (“We frequently spotlight or recommend candidates who are trending on our platform, however these decisions aren’t made on the basis of any particular stance or issue.”).

<sup>23</sup> Resp. at 2-3, Kordestani Aff. ¶ 8, MUR 7399.

<sup>24</sup> Kordestani Aff. ¶ 8, MUR 7399.

<sup>25</sup> See *id.* ¶¶ 4-6.

1 the appearance of the hashtag “#DumpCrowdPac” on social media.<sup>26</sup> Kordestani states that  
2 Crowdpac heard directly from users and candidates that the presence of Hilton and Republican  
3 candidates on its platform was seen as an endorsement of President Trump.<sup>27</sup> With the threat of  
4 users leaving the platform to go to a competitor, Crowdpac argues that it made a business  
5 decision to suspend some, but not all, Republican candidates from its platform.<sup>28</sup>

### 6 III. LEGAL ANALYSIS

7 The Act defines a political committee as “any committee, club, association, or other  
8 group of persons” that receives aggregate contributions or makes aggregate expenditures in  
9 excess of \$1,000 during a calendar year.<sup>29</sup> Notwithstanding the threshold for contributions and  
10 expenditures, an organization will be considered a political committee only if its “major purpose  
11 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”<sup>30</sup> Political  
12 committees are required to register with the Commission, meet organizational and recordkeeping  
13 requirements, and file periodic disclosure reports.<sup>31</sup>

<sup>26</sup> See Resp. at 2, Kordestani Aff. ¶¶ 4-7, MUR 7399; see also George Lakoff, *Are You Crowdfunding A Fox News Host?*, Medium (Mar. 20, 2018), <https://medium.com/@GeorgeLakoff/are-you-crowdfunding-a-fox-news-host-5f45ce15d5f5>.

<sup>27</sup> See Resp. at 2, Kordestani Aff. ¶ 5, MUR 7399.

<sup>28</sup> See Resp. at 2 & n.15, Kordestani Aff. ¶¶ 7-8, MUR 7399. As support for its claim that it did not suspend all Republican campaigns from its website, Crowdpac points to “Republican Women for Progress” as an example of a Republican-affiliated organization that remains active on its website. Resp. at 2 & n.14, MUR 7399. While a search of Crowdpac’s website does show a page for this group, there does not appear to be any active Republican candidate pages. In fact, the website allows filtering of campaigns on the basis of “Political Affiliation,” and then lists as options “Democrat,” “Independent,” “Green,” “Libertarian,” “Unaffiliated,” and “Write-In.” It does not include “Republican” among these choices. See *Browse Our Campaigns to Make an Impact Today*, Crowdpac.com, <https://www.crowdpac.com/campaigns> (last visited Oct. 9, 2018).

<sup>29</sup> 52 U.S.C. § 30101(4)(A).

<sup>30</sup> Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); see *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

<sup>31</sup> See 52 U.S.C. §§ 30102; 30103; 30104.

1 In a series of advisory opinions, the Commission has concluded that commercial entities  
2 that provide candidate-matching tools and contribution processing services for the benefit of  
3 their individual customers are not political committees.<sup>32</sup> In reaching this conclusion, the  
4 Commission considered whether these entities were providing services “at the request of and for  
5 the benefit of the contributors, as opposed to that of the recipient committees” and “whether the  
6 provided services relieve[d] the recipient committees of any financial burden or obligation they  
7 would otherwise incur, thereby providing something of value that would constitute a contribution  
8 from the entity that provide[d] the services.”<sup>33</sup>

9 Here, as in those advisory opinions, the available information indicates that Crowdpac  
10 provides a commercial service for the use and benefit of individual users, matching them with  
11 candidates through its online tools and earning revenue from fees and donations paid by users  
12 who make contributions and pledges through candidate pages.<sup>34</sup> As the Commission observed in

<sup>32</sup> See, e.g., Advisory Op. 2016-08 at 1-2, 7 (ebundler) (company providing a web-based platform that allows individuals to search for candidates and make contributions that the requestor will process was a commercial service provider, not a political committee); Advisory Op. 2015-12 at 1-2, 6 (Ethiq) (for-profit company with a downloadable mobile application that allows users to identify candidates and corporations that align with their views on a variety of issues was not a political committee); Advisory Op. 2012-22 at 1-4, 9 (skimmerhat) (for-profit company with web-based platform that matches users to candidates sharing their values and processes their contributions was a commercial service provider, not a political committee); Advisory Op. 2011-19 at 1-4, 10 (GivingSphere) (for-profit company that allowed individuals to search for, and donate to, political committees through its internet and mobile-based processing platform was not a political committee).

<sup>33</sup> Advisory Op. 2017-06 at 5 (Stein & Gottlieb); see also Advisory Op. 2016-08 at 5-6; Advisory Op. 2015-12 at 3; Advisory Op. 2012-22 at 5-7; Advisory Op. 2011-19 at 7-9; Advisory Op. 2011-06 at 5-6.

<sup>34</sup> See Kordestani Aff. ¶¶ 2-3, MUR 7399.

Bassilian and DeMartini claim that Crowdpac is indistinguishable from ActBlue, which was the subject of Advisory Opinion 2006-30. Compl. at 1, MUR 7309. However, ActBlue, unlike Crowdpac, which holds itself out as a commercial service for its users, registered with the Commission as a nonconnected political committee, represented that it was “formed to promote the election of Democratic candidates for federal office,” see Advisory Opinion Request at 2, Advisory Op. 2006-30 (ActBlue), and received and forwarded earmarked contributions to federal candidates. See Advisory Op. 2006-30 at 2 (ActBlue) (“ActBlue currently serves as a conduit for contributions earmarked for Democratic candidates and party committees.”); 11 C.F.R. § 110.6(c)(1)(i) (“The intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission . . .”).



1 Advisory Opinion 2014-07, “neither Crowdpac’s services nor its fees are contributions to the  
2 recipient political committees.”<sup>35</sup> Similarly, the fees that Crowdpac’s customers pay are not  
3 contributions to Crowdpac; rather, they are commercial payments in exchange for Crowdpac’s  
4 services.<sup>36</sup>

5 In addition, Crowdpac’s promotion of certain candidates to the exclusion of others on its  
6 website and social media pages and its suspension of Republican campaigns’ ability to fundraise  
7 on its platform are insufficient to conclude that it is a political committee. Businesses that  
8 provide commercial services to contributors, such as those offered by Crowdpac, may “target  
9 customers and limit the range of services provided, without making any contributions  
10 themselves.”<sup>37</sup> As long as they are using “commercially reasonable criteria,” the Commission  
11 has explained that they need not make their services available to users and candidates of all  
12 political affiliations.<sup>38</sup> The Complaint fails to provide information that rebuts Crowdpac’s sworn  
13 statement that commercial interests drove its decision to suspend Republican candidates from its  
14 site. Thus, the available information fails to provide reason to believe that Crowdpac is a  
15 political committee and thus subject to the reporting obligations of such committees.

<sup>35</sup> Advisory Op. 2014-07 at 6. That Democracy Engine actually processes and transmits the contributions does not alter this conclusion, as the Commission has stated that Democracy Engine’s services and fees are not contributions. *See* Advisory Op. 2011-06 at 4-6; Advisory Op. 2014-07 at 5-6.

<sup>36</sup> *See* Advisory Op. 2015-08 at 8 (Repledge) (explaining that fees individuals will pay to Repledge for processing their contributions “are not contributions to Repledge because they are not gifts or donations to Repledge but, rather, commercial payments in exchange for its processing services”). Even though users can give voluntary donations to Crowdpac in the form of optional tips, these donations appear to be provided only in connection with Crowdpac’s commercial services, and thus incorporated into its revenue model. *See* Kordestani Aff. ¶ 3.

<sup>37</sup> Advisory Op. 2017-06 at 6.

<sup>38</sup> *See id.* (approving of proposal to develop and market a mobile app and services to “Democratic contributors” and feature only Democratic candidates in the app based on requestors’ explanation that they could not successfully market the app as a bipartisan platform in the current political environment).

- 1           Accordingly, the Commission finds no reason to believe that Crowdpac violated 52
- 2   U.S.C. §§ 30102, 30103, and 30104(a) by failing to organize, register, and report as a political
- 3   committee.

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